IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5668 of 1986

WITH

SPECIAL CIVIL APPLICATION No 10099 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VISHNUBHAI AMBALAL PATEL

Versus

SHANKERJI PNJJAJI THAKORE

Appearance:

1. Special Civil Application No. 5668 of 1986

MR AJ PATEL for the Petitioner

MR GHANSHYAM AMIN for Respondent No. 1

MR MANISH DAGLI, AGP for Respondent No. 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 27/03/2002

COMMON ORAL JUDGEMENT

Both these petitions challenge two orders passed by the Gujarat Revenue Tribunal (hereinafter referred to as 'the Tribunal') under Section 76 of the Bombay Tenancy And Agricultural Lands Act, 1948 (hereinafter referred to as 'Tenancy Act') in respect of two adjoining parcels of land being block numbers 261 and 260 (respectively) admeasuring 1 acre and 38 gunthas and H.0-79 Ares 68 sqmts in village Kudasan of Taluka and District Gandhinagar purchased by the same petitioner from the same respondent under two separate registered sale deeds dated January 21, 1981.

2. Since the provisions of Section 63 of the Tenancy Act impose a restriction that agricultural land cannot be sold in favour of a person who is not an agriculturist, the petitioner had relied upon the petitioner's possessing land bearing Survey No. 185 of village Memnagar in Taluka Ahmedabad City and District Ahmedabad which the petitioner was holding since 1960. However, the Mamlatdar and Agricultural Land Tribunal, Gandhinagar initiated proceedings under Section 84-C of the Tenancy Act being Tenancy Case Nos. 2547 and 2546 of 1982 on the ground that both the transactions of sale dated January 21, 1981 were in violation of Section 63 read with Section 2(2) and 2(6) of the Tenancy Act. The petitioner's appeals being Appeal Nos. 201 of 1983 and 203 of 1983 (respectively) were dismissed by the Prant Officer or the Deputy Collector. The petitioner accordingly filed two separate revision applications before the Tribunal.

3. As far as the land bearing block No. 261 is concerned, revision application No. 87 of 1984 came to be dismissed by the Tribunal vide its judgement and order dated April 8, 1986. The said judgement is challenged in Special Civil Application No. 5668 of 1986. While admitting the petition on October 23, 1986, this Court granted ad-interim stay of operation, implementation and execution of the orders passed by the Tribunal, the appellate officer and the Mamlatdar and Agricultural Land Tribunal. The petitioner accordingly continues to remain in possession of the land bearing block No. 261.

4. As far as block bearing survey No. 260 is concerned, the history of the litigation is a little chequerred one. The petitioner's revision application No. 1688 of 1983 against the appellate order dated October 10, 1983 of the Deputy Collector came to be partly allowed as the Tribunal set aside the orders passed by the authorities below and remanded the matter to the Mamlatdar and the Agricultural Land Tribunal for a

fresh decision. After the remand, the Mamlatdar and Agricultural Land Tribunal vide his order dated January 16, 1986 withdrew notice under Section 84-C of the Tenancy Act on the ground that there was no violation of the conditions imposed under Section 63 read with Section 2(2) and 2(6) of the Act. The Deputy Collector, Gandhinagar took the aforesaid order in suo motu revision under Section 76(A) of the Act and ultimately set aside the order of the Mamlatdar and directed that the land shall vest in the Government and shall be disposed of accordingly under Section 84-C of the Act. Aggrieved by the said order, the petitioner filed revision application before the Tribunal. By order dated Feburary 21, 1995, the Tribunal allowed the revision application to the extent that the order of the Mamlatdar and Agricultural Land Tribunal was ordered to be modified to the effect that the land shall vest in the Government only on failure of the authorities in restoring the land to its original position. In respect of the aforesaid order dated February 21, 1995, the petitioner filed review application before the Tribunal which came to be dismissed on October 10, 1995, hence, the petitioner filed Special Civil Application No. 10099 of 1995 challenging both the orders dated February 21, 1995 dismissing the revision application and the order dated October 10, 1995 dismissing the revision application. The relief was granted in favour of the petitioner at the time of admission of this petition also.

5. Since the controversy in the two petitions pertains to two adjoining blocks of land in the same village Kudasan and since the petitioner had relied upon his ownership of the same land bearing Survey No. 185 in village Memnagar, one might expect that the legal controversy involved in these petitions would be same. However, surprisingly, in view of the different findings given by the authorities in the two separate proceedings pertaining to these two adjoining parcels of land, the Court will first deal with the common controversy involved in both the petitions and then deal with the controversy arising only in Special Civil Application No. 10099 of 1995.

6. Going to the common controversy in the two petitions, the revenue authorities had taken the view that the petitioner, at the relevant time, was residing at Ahmedabad and the lands purchased by him in village Kudasan (block Nos. 261 and 260) were situated at a distance of more than 15 kmts (to be precise 18 kmts) from the place of his residence. Secondly, it was also held by the authorities that the distance between the

land bearing survey no. 185 in village Memnagar, on the one hand and the land bearing block nos. 260 and 261 in village Kudasan on the other hand was more than 8 kmts. The significance of these findings would become apparent when one considers the provisions of Section 63 read with Section 2(2) and 2(6) of the Tenancy Act. Section 63 of the Act provides that no sale of any land or interest therein shall be valid in favour of a person who is not an agriculturist, provided that the collector may grant permission for such sale on such conditions as may be prescribed subject to the rider that no such permission shall be granted if the annual income of the purchaser from other source exceeds Rs.5000/-p.a. Section 2(8) defines 'land' as land which is used for agricultural purposes or which is so used but is left fallow. Section 2(1) defines 'agricultural' as including horticulture raising of crops, grass or garden produce, use by an agriculturist of the land held by him for grazing of his cattle, etc. Section 2(2) defines "agriculturist" as meaning a person who cultivates land personally. Section 2(6), at the relevant time, defined the expression "to cultivate personally" as under:

"means to cultivate land on one's own account-

i) by one's own labour, or

ii) by the labour of any member of one's family, or

iii) under the personal supervision of oneself or any member of one's family, by hired labour or by servants on wages payable in cash or kind but not in crop share.

being land, the entire area of which -

a) is situated within the limits of a single village, or

b) is so situated that no piece of land is separated from another by a distance of more than five miles (i.e. 8 kms), or

c) forms one compact block

Explanations 1 & 2 are not relevant for the present purposes. Explanation 3 defined the expression "personal supervision" as giving instructions to the labourers/servants in regard to the cultivation of land and exercising control during the process of cultivation

by the person concerned residing during major part of the agricultural season in the village in which the land is situated or at a place in another village situated at a distance not exceeding 15 kmts from the land.

7. In view of the aforesaid provisions, the authorities dealing with block No. 261 gave the finding that the petitioner was residing at a place at a distance of more than 15 kmts from the land in Kudasan and the distance between the land in Kudasan and the land in Memnagar was more than 5 miles (more than 8 kmts). Surprisingly, in respect of the adjoining land bearing survey no. 260 (subject matter of Special Civil Application No. 10099 of 1995) the Mamlatdar and Agricultural Land Tribunal in his order dated January 16, 1986 had held that the distance between Memnagar and Kudasan was only 7 kmts. However, that order of the Mamlatdar came to be set aside by the Deputy Collector in suo motu revision and the final finding given by the Tribunal in respect of the said land is that the distance between Kudasan and Memnagar is more than 8 kmts. In view of the aforesaid findings of fact, the petitioner would not have been able to succeed in his challenge to the impugned orders passed by the Tribunal. However, statutory amendments to the provisions of Section 2(6) of the Tenancy Act during pendency of those petitions have come to the rescue of the petitioner.

8. By Gujarat Act No. 4 of 1995 which came into force on April 6, 1995, the State Legislature deleted the portion beginning with the words "bearing land entire area" and ending with the words "one compact block" and also deleted Explanation 3 to Section 2(6). Since there was some doubt as to whether the said amendment was retrospective in nature, by Gujarat Act No. 3 of 2001, the State Legislature has made it clear in unmistakable terms that the deletion was retrospective by specifically providing that the words "shall be deleted" in the amending Act No. 4 of 1995 were substituted by the words "shall be and shall be deemed always to have been deleted". Section 3 of the said Act of 2001 further provides that all the proceedings relating to any order made or purported to be made under Section 84-C of the Tenancy Act for contravention of Section 63, in so far as it relates to the breach of Clause(6) of Section 2 of the Tenancy Act, pending before any Court, Tribunal or other authority shall stand abated, notwithstanding anything contained in Section 84-C of the Tenancy Act, provided that the validity of any order of any Court, Tribunal or authority, which had become final, was not to be affected. Explanation to Section 4 provides that the

word 'final' means no appeal, revision or any other proceeding is pending before any Court, Tribunal or other authority against any such order on April 6, 1995.

9. As per the said explanation to Section 4 of the Act 3 of 2001, orders passed by the Tribunal in the present two cases had not become final because on April 6, 1995 Special Civil Application No. 5668 of 1986 was pending before this Court in respect of block No. 260 and in respect of block No. 261 the petitioner's appeal No. 1 of 1995 was pending before the Deputy Collector (Land Reforms) Appeals, Gandhinagar, when the amending Act No. 4 of 1995 came into force on April 6, 1995. There is no dispute about applicability of the Amending Acts 4 of 1995 and 3 of 2001 to both the transactions in question and the retrospective effect of these amendments. In view of the said amendments, therefore, it has to be held that the proceedings under Section 84-C of the Tenancy Act in respect of these two parcels of land that is block Nos. 261 and 260 in village Kudasan on the ground that the distance between the petitioner's residence and the land in question was more than 15 kmts or that the distance between the lands in question in Kudasan and the petitioner's land in Memnagar was more than 8 kms, have abated.

10. Special Civil Application No. 5668 of 1986 is accordingly required to be disposed of in favour of the petitioner by declaring that the proceedings under Section 84-C of the Tenancy Act in respect of Block No. 261 in village Kudasan have abated. That, however, does not conclude the controversy, as far as Special Civil Application No. 10099 of 1995 is concerned. In respect of the land bearing block No. 260, while the Mamlatdar and the Agricultural Land Tribunal had passed the order dated January 16, 1986 in favour of the petitioner by holding that the distance between the land in Kudasan and the land in Memnagar was less than 8 kmts, the Deputy Collector in suo motu revision under Section 76-A of the Tenancy Act not only set aside that finding but in his order dated August 25 1988 (Annexure-D) went further and held that the land bearing survey No. 185 in village Memnagar was purchased by the petitioner in the year 1966-67 but the land was shown fallow (padtar) continuously from 1972-73 to 1981-82, meaning thereby, when the petitioner purchased the land bearing block No. 260 on January 21, 1981, the petitioner had not cultivated the land in Memnagar for almost a decade, hence the petitioner was not an agriculturist on the date of purchasing the land bearing block No. 260. The Tribunal also confirmed this finding in its revisional

order dated February 21, 1995. That order is under challenge in Special Civil Application No. 10099 of 1995 and the aforesaid controversy is the only controversy which survives for adjudication in this petition.

11. Mr. A.J.Patel, learned counsel for the petitioner has submitted that the Tribunal committed a serious error of law apparent on the face of the record in holding that the petitioner was not an agriculturist on January 21, 1981, only because the village form No. 7/12 reflected that no cultivation had taken place for a few prior years in survey No. 185 in Memnagar. Mr. Patel submitted that village form No. 7/12 shows that the land was cultivated in the years 1976-77 and 1977-78 and was again cultivated in the years 1982-83 and 1983-84. Apart from this factual controversy, Mr. Patel has submitted that the Tenancy Act itself defines "land" as under:

2(8) "land" means:

(a) Land which is used for agricultural purposes or which is so used but is left fallow, and includes the sites of farm buildings appurtenants to such land and ....."

(b) ....(emphasis supplied).

The learned counsel has also relied on the definition of "land" in the Gujarat Agricultural Land Ceiling Act, 1960 (hereinafter referred to as 'Ceiling Act') wherein Section 2(17), defines it as land which is used or capable of being used for agricultural purposes and includes lands on which grass grows naturally. It is vehemently submitted that an agricultural land does not cease to be agricultural land, whether for the purposes of the Tenancy Act or for the purposes of the Ceiling Act, merely because the land is not cultivated in a given year. It is submitted that agricultural land ceases to be agricultural land only when any permission is granted for non-agricultural use of the land. Reference is also made to the provisions of Section 65 of the Tenancy Act in support of the contention that unless specific proceedings are taken out under Section 65 of the Act for non-user of agricultural land for agricultural purposes, the owner of an agricultural land cannot be visited with any adverse consequences.

12. On the other hand Mr. Manish Dagli, learned Assistant Government Pleader for the respondent authorities and Mr. Saurabh Amin, learned advocate for

respondent Nos. 2 to 4 (the original vendors of block Nos. 260 in village Kudasan) have opposed the petition and submitted that the concurrent finding given by the Deputy Collector and the Tribunal that the land in question was not used for agricultural purpose at the relevant time and, therefore, the petitioner was not an agriculturist is a finding of fact which may not be disturbed by this Court in a petition under Article 227 of the Constitution. It is further submitted by the learned counsel for the respondents that the preamble to the Tenancy Act clearly indicates that the Tenancy Act was enacted for ensuring the full efficient use of land for agricultural purpose and to regulate and impose restrictions on the transfer of agricultural lands. The very purpose of imposing the restriction embodied in Section 63 of the Tenancy Act was to ensure that agricultural land remains with an agriculturist and is not to be sold or transferred to a non-agriculturist so that the agricultural activities go on and more and more agricultural production is available to the society at large. It is submitted that for the same reason, Section 65 of the Tenancy Act also empowers the Government to take over the management of agricultural land lying idle.

13. Having heard the learned counsel for the parties, it appears to the Court that the larger question raised by the learned counsel for the respondents is not required to be decided on merits in the facts of the present case, for the simple reason that even if an agriculturist is to be visited with any adverse consequences for non-user of any agricultural land for agricultural purposes, Section 65 of the Tenancy Act contemplates that such adverse consequences can follow only when non-cultivation of the agricultural land was not beyond the control of the agriculturist and an inquiry is made by the Government to ascertain whether the non-cultivation was for causes beyond the control of the agriculturist. A bare perusal of Section 65(1) makes this intention clear.

14. In the facts of the instant case it is an admitted position that while the Deputy Collector and the Tribunal have given a finding that the petitioner was not cultivating the land bearing survey No. 185 in village Memnagar at the relevant time in the year 1980-81, there is no finding that such non-cultivation was for causes not beyond the petitioner's control. In fact, no such inquiry was held either by the Deputy Collector or by the Tribunal regarding the causes for non-cultivation and, therefore, on this ground alone, the Court is inclined to interfere with the order of the Tribunal and consequently

with the order passed by the Deputy Collector, in so far as the said authorities gave a finding that the petitioner was not an agriculturist at the time of purchasing the land in village Kudasan. The learned counsel for the respondents, would, ofcourse, submit that for this reason the matter may be remanded to the lower authorities for holding a fresh inquiry.

15. Mr A.J.Patel, learned counsel for the petitioner opposes the above request and submits that when the same authorities had not found anything objectionable on this score in the matter of purchase of adjoining block No. 261 in the same village Kudasan with reference to the same agricultural land bearing survey No. 185 in village Memnagar, there is no reason why the authorities should be permitted to take a contrary stand in respect of the adjoining parcel of land in the same village being block No. 260 in village Kudasan. Mr. Patel has also submitted the proceedings under Section 84C were otherwise also vitiated because they were initiated after one year from the date of purchase of the land bearing block No. 260.

16. Having heard the learned counsel for the parties, it appears to the Court that when both the adjoining lands were purchased in January 1981, the entries to that effect were certified in March 1982 and in respect of one parcel of land (block No. 261 in village Kudasan) holding of agricultural land in survey No. 185 of village Memnagar was sufficient to treat the petitioner as an agriculturist, there is no justification for remanding the matter to the Tribunal after a passage of 21 years from the date of the purchase of the land in question. In this view of the matter, the Court also does not proposes to go into the other contention raised by Mr. Patel, that the land bearing survey No. 185 in village Memnagar was being cultivated intermittently in the years 1976-77 and 1977-78 and again in the years 1982-83 and 1983-84, and, therefore, the land had not ceased to be agricultural land.

17. For the aforesaid reasons both the petitions are allowed. The judgements and orders of the Revenue Tribunal as confirming the orders of the lower authorities are hereby set aside and the respondent-authorities are restrained from continuing with the proceedings under Section 84-C of the Bombay Tenancy and Agricultural Lands Act, 1948 in respect of the lands bearing block No.s 261 and 260 in village Kudasan of Taluka and District Gandhinagar as the said proceedings have abated in view of the Gujarat Acts 4 of

1995 and 3 of 2001.

18. Rule is made absolute to the aforesaid extent with no order as to costs.

(M.S.Shah, J)

Jayanti*